IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 622 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHCHANDRA D MEHTA

Versus

SHASTRI DHARMDASJI SWAMI

Appearance:

1. Civil Revision Application No. 622 of 1990

MR SURESH M SHAH for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2,5-6

DELETED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioner is the original applicant of Civil

Misc.Application No.128/1988. The said application was filed by the present petitioner for condonation of delay in filing appeal, since there was a delay of about 567 days in filing appeal. The trial Court after considering the arguments of both the sides came to the conclusion that there is no justifiable reason for condoning the delay in preferring appeal, therefore, the application for condonation of delay was rejected. Against which the present Civil Revision Application is filed by the original applicant.

2) Considering the nature of the Civil Revision Application the same is not maintainable as it is filed against a discretionary order, by which the the learned Judge has not condoned the delay in filing appeal. The impugned order is not revisable in view of the amendment in Section 115 of C.P.C.

3) Having realised this difficulty Mr.Shah for the petitioner wants to withdraw this Civil Revision Application, reserving his right to file a Special Civil Application for challenging the impugned order of the appellate Court. Permission to withdraw this Civil Revision Application is granted. If the petitioner is desirous of filing a petition it will be open for him to file the same.

4) Accordingly, this Civil Revision Application is disposed of as withdrawn. Rule is discharged. No order as to costs.

(P.B.Majmudar,J.)

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